

Digitized by the Internet Archive
in 2010 with funding from
Lyrasis Members and Sloan Foundation

BY THE HOUSE OF DELEGATES,

FEBRUARY 4th, 1867.

Read, ordered to be printed, and made the Order of the Day for Wednesday, 6th February 1867, at 1 o'clock.

REPORT

OF THE

COMMITTEE ON ELECTIONS

IN THE CONTESTED ELECTION CASE FROM

ALLEGANY COUNTY.

ANNAPOLIS:
HENRY A. LUCAS, PRINTER.

1867.

THE ALLEGEDLY FALSE TESTIMONY

OF THE WITNESSES

IN THE CASE OF THE ALLEGEDLY FALSE TESTIMONY
OF THE WITNESSES IN THE CASE OF THE ALLEGEDLY FALSE TESTIMONY

THE ALLEGEDLY FALSE TESTIMONY

OF THE

COMMITTEE OF THE ALLEGEDLY FALSE TESTIMONY

ALLEGEDLY FALSE TESTIMONY

THE ALLEGEDLY FALSE TESTIMONY

OF THE WITNESSES

REPORT.

To the Honorable

The House of Delegates of Maryland :

The Committee on Elections, to which was referred the memorial of William Devecmon, Patrick Hamill, William A. Bryden and John McElfish, contesting the right of Wm. R. McCulley, Samuel M. Haller, Daniel C. Bruce and Chas. Gilpin, to seats in this Honorable Body, as delegates from Allegany county, and claiming said seats as being rightfully entitled thereto, beg leave to report that they have, fully and attentively, considered the questions raised by the contestants in their memorial, and on which the sitting members have joined issue in their counter memorial, and the evidence produced on the respective sides, and herewith submit the conclusions at which they have arrived.

Before proceeding to investigate the charges, and the evidence submitted to support them, your committee examined the notices served on the sitting members, and found them in legal form ; and that in this particular, as in other particulars of form and substance, there has been a strict compliance on their part with the requirements and provisions of the Code relating to contested elections in this House.

The charges were then proceeded with in the order in which they are set forth in the memorial of the contestants ; and in regard to these your committee, after a full review of the testimony, were unable to perceive any evidence on which the first charge in the contestants' memorial could be sustained ; while without doubt the conduct of the judges in many of the districts, which will come more fully under review hereafter, was in the judgment of your committee, partial, unjust and illegal, and in some of them deeply reprehensible in the matter of excluding legal voters, and in one of the districts in soliciting voters to support a particular ticket ; yet there were no facts appearing to your committee to warrant them in finding that the judges of election themselves were guilty of practicing threats and intimidations on legal voters.

2nd. The second charge, "that the judges of election unlawfully and fraudulently refused to permit registered voters to

vote for the contestants ; and that the number of legal voters so refused, and who offered to vote for the contestants, would, if received, give the contestants a large majority of the legal voters," your committee find is sustained in part, and to an extent to authorize the majority of your committee to declare that, in their judgment, the seats of two of the sitting members ought to be declared vacant, and that the same should be awarded to two of the contestants.

By a reference to the testimony spread upon the records of the contestants, it will be found that in Districts Nos. 1, 2, 3, 5, 10, 13, 14 and 15, a large number of legal and registered voters, who presented themselves at the polls on the day of election, and offered their votes, were refused and rejected by the judges, on a variety of unwarrantable and frivolous pretexts, the main one being the vague and general charge of disloyalty ; although these voters had been duly registered in 1866, at which registration their qualifications as voters, under the Constitution and laws of this State, had been fully inquired into and determined, and their right to vote finally ascertained and fixed beyond challenge or controversy.

The majority of your committee reached the conclusion, after a full review, and a protracted discussion of the constitutional provisions bearing on this subject, and of the registration law, that the registration of 1866 was binding and conclusive on the judges of election ; and it was incompetent and illegal for them to disregard it, and enter upon a trial of the voters' qualifications, or to put any oaths or tests whatever, as conditions of exercising the elective franchise.

The sole duty under existing laws, being confined to the reception and counting of votes, and making returns of the elections—purely ministerial offices, and if competent to go into an investigation at all, they are confined to the question of identity. Whether the voter claiming to vote under a certain name is the person he professes himself to be ; to that extent and no further does the judicial power formerly possessed by the judges of election now go under the constitution of 1864, and the Registration Act of 1865, Chapter 174. Under this view of the law, the majority of your committee hold that the rejection of the votes in the above mentioned Districts, on the grounds on which they were rejected, was illegal ; that the same ought to have been received and counted, as they were tendered, in which case the result would have been materially different from that announced in the returns.

By reference to these returns, a copy of which, under the seal of Allegany county court, is herewith appended and made part of this report, it appears that the following vote was cast for the Contestants and sitting members respectively, to wit:

For the Sitting Members.

William R. McCulley,	-	-	-	2,399 votes.
Charles Gilpin,	-	-	-	2,380 votes.
Samuel M. Haller,	-	-	-	2,359 votes.
Daniel C. Bruce,	-	-	-	2,396 votes.
William A. Falkenstein,	-	-	-	2,305 votes.

For the Contestants.

George W. McCulloh,	-	-	-	2,356 votes.
Patrick Hammill,	-	-	-	2,307 votes.
William Devecmon,	-	-	-	2,336 votes.
John McElfish,	-	-	-	2,297 votes.
William A. Bryden,	-	-	-	2,334 votes.

The total number of legal registered votes rejected in the above mentioned districts, were as follows :

In District No. 1.	-	-	-	8 votes.
In District No. 2,	-	-	-	6 votes.
In District No. 3,	-	-	-	1 vote.
In District No. 5,	-	-	-	1 vote.
In District No. 10,	-	-	-	30 votes.
In District No. 13,	-	-	-	1 vote.
In District No. 14,	-	-	-	2 votes.
In District No. 15,	-	-	-	2 votes.

Making in all, 51 votes.

Which were offered to and refused by the judges on the illegal grounds set forth above, and which, according to the testimony of the voters who offered them, would have been cast for the Contestants. Had these votes been received as they should have been, and counted for the Contestants, the result of the election for Delegates in Allegany county, would have materially changed.

The count would have stood as follows :

The Contestants.

William Devecmon,	-	-	-	2,387
William A. Bryden,	-	-	-	2,385
Patrick Hammill,	-	-	-	2,358
John McElfish,	-	-	-	2,348

For Sitting Members.

Charles Gilpin,	-	-	-	2,380
Samuel M. Haller,	-	-	-	2,359
William R. McCulley,	-	-	-	2,399
Daniel C. Bruce,	-	-	-	2,396

Thus electing two of the Contestants William A. Bryden, and William Devecmon, over Charles Gilpin and Samuel M.

Haller, two of the sitting members, the former over Gilpin, by seven votes; the latter over Haller, by twenty-six votes. The majority of the committee therefore, cannot but conclude that Charles Gilpin and Samuel M. Haller, are not entitled to the seats they occupy, and that William Devecmon and William A. Bryden, are entitled to the seats in this House in their stead, and of right ought to occupy them, and at the conclusion of their report, the majority of your committee will submit a resolution to that effect.

In behalf of the Contestants, the right to count the vote of voters thus illegally and unjustly excluded, cannot in the judgment of the majority of the committee be gainsayed or questioned; it is supported, it is conceived, by every principle of justice and equity, by every analogy of law, and the principle and fact of adjudicated cases. This exclusion was a wrong, done not only to the voters themselves, for which a remedy is provided by law; but it was and is an injustice to the Contestants, to the people of the county, to the State itself, interested in the fairness of its elections, the just execution of its laws, and the integrity of its legislative bodies; which can only receive appropriate redress in this House. As the grand inquest of the State, it has the power to inquire into all grievances, and it is constituted the judge of the qualifications and election of its members.

The case presented by the record of the Contestants appeals strongly to its interposition in both these characters; for there can be no greater grievance done to the people, nor a higher offence committed against the State in a republican government, than the unjust exclusion from the exercise of the franchise of those whose right to it is secured and established by the additional guarantees of Constitutional provisions and of statute law.

The ballot box may be as much polluted by the rejection of legal votes as by the reception of illegal ones. It fails in its great object and purpose of affording a test of the popular will and judgment by the one means or by the other, and it will soon cease to possess the regard and esteem of the people; especially if those who are charged with its guardianship, who are its sworn ministers, set the example of its violation.

The general disrepute into which it will fall, if the gross practices disclosed by the testimony in this record remain unrebuked, may in some moment of universal disgust be followed in this country, as it has been in others, by its being set aside altogether, as the arbiter of political issues and the source of political power. To prevent a catastrophe so fatal to republican government, a resort to every lawful and constitutional means to avert these practices, ought to be adopted, and none are more obvious, more speedy and effectual than by letting it be known to the world that those who

are guilty of them dishonor themselves in vain, that the transient power thus acquired shall be shortlived.

In this connection the majority of your committee would remark that they do not wish to be understood as implicating the sitting members in these transactions of the judges in the districts referred to; or that they took place by their consent and connivance, although they are constrained by the facts presented to adopt the conclusion that two of them hold their seats in this House by virtue of these transactions.

On the contrary, it gives them unfeigned satisfaction to be able to say that no proof appears to sustain the specification contained in the sixth count of the contestants' memorial, "that the sitting members, or some of them, advised the Judges to exclude persons from voting for contestants." Drawn up necessarily with some degree of haste in order to be within the time limited by law for setting forth the grounds and giving the notices of contest, while the excitement of the election was still fresh, and the minds of so many were smarting under a keen sense of the indignity inflicted on them, by their unjust exclusion from the polls, it is not to be wondered at that the charges in the contestants' memorial are in some few minor particulars more extensive than the evidence afterwards produced warranted.

In regard to the other charges contained in the memorial of the contestants, the House will perceive that in the main they are but a repetition, with specifications, as to places and districts, of the general charge, contained in the second count, which has been already considered and discussed with a reference to the districts in which the majority of your committee found the charge, to wit: "The exclusion of legal and qualified voters from the ballot box by the Judges to whom they offered their ballots, with the names of the contestants upon them," to be fully sustained.

The majority of your committee, therefore, feel themselves relieved from the necessity of entering upon a detailed examination of these more particular specifications of the same general charge.

There are several points presented in the remaining charges which are deemed by the majority of your committee as worthy of consideration and comment.

It is charged in the fourth count that the polls in Districts Nos. 1 and 4 were held in unusual and improper places, and that these places were purposely chosen with an improper bias.

The proof is that the polls of Election District No. 4 were held at a place where they had never been held before, at a place notoriously disreputable, whose character is sufficiently indicated by the name by which it was known in the neighborhood, "The Hole in the Wall;" a drinking saloon in a cave under a mountain, kept by a man named Powell, who

had a large bet on the result of the election. The selection of such a place is well calculated to excite the gravest suspicions as to the motives of the Judges in making such selection; and those suspicions receive additional strength from the fact developed in the testimony of Pagenhardt on page 60 of contestants' record, that after the polls were closed these Judges, instead of complying with their duty as prescribed by law, of *immediately* proceeding to open the ballot box, and to count and cast up the ballots, left the room, or cave, which was locked up by Powell, who retained the key; the Judges remaining away for an hour and a half, leaving a clerk in the room.

Such a dereliction of duty, in sworn officers is deserving the severest censure.

In regard to District No 10, a large amount of testimony has been taken, going to establish the fact of the presence of armed force at the polls of that District, on the day of election. By a reference to the testimony of Tobias S. Fisher and James Brafford, on page 59 of contestant's record, and to that of Upton F. Biggs, on page 19 of the record of the sitting members, it will be seen, that the presence of this armed force was in pursuance of a resolution adopted at a secret meeting of the friends and supporters of what was known as the Radical ticket in that district. In that meeting, Mr. James Chisholm, one of the Judges of Election, participated.

In dealing with this district, the majority of your Committee hesitated between counting the votes in favor of the contestants, of those who offered their ballots with the names of contestants upon them, and were refused their votes, and throwing out the vote of this district altogether. While the fact of the presence of the armed force, and that it was there by a preconcert and arrangement, is thus conclusively established; yet on the point, as to the effect of this array of armed men on the minds of the voters of the district, the testimony is conflicting; some swearing that its effect was to intimidate and keep away voters from the polls: others who attempted to vote and were refused by the judges, and who were examined on behalf of the contestants, swearing that they were not intimidated by this military display. That no actual violence or outrage ensued is a fact admitted by all. It seems to be further conceded that there was a custom prevailing, to a partial extent in the district for voters to carry their guns to the polls, for the purpose of shooting at a mark on election days.

On this state of the proof, the majority of your Committee did not, after mature consideration, deem themselves justified in throwing out of the count the entire vote of District No. 10; but adopted the other alternative of counting for the contestants the votes of those legal and registered voters who

offered their ballots and were wilfully and illegally refused by the judges, and on whose ballots were the names of the contestants. The number of voters thus unlawfully excluded in this district was, as mentioned above, thirty; but while coming to this conclusion, the majority of your Committee cannot withhold the expression their deep reprobation of a practice so surely calculated to impair and utterly destroy the freedom of elections, by inspiring in the minds of quiet and peaceable citizens, well grounded fears of personal peril in approaching the polls.

The purity and freedom of elections are essential to the preservation of republican governments. Without these, institutions however free in form, are but a mockery and a delusion.

In glancing over the testimony presented to the House in this cause, one cannot avoid being painfully struck by the fact that the demoralizing practices that have too often for years past characterized the elections in large cities, are spreading with a vicious rapidity of growth into the small town and among the rural population. If they cannot be arrested by some stringent legislation, or by an improved and a more wholesome condition of the public mind, emancipated from the fears and hates engendered by the recent civil war, then indeed is the future of our country a gloomy one. For their prevalence and diffusion will demonstrate a deep and incurable disorder in the body politic, which sooner or later, despite the change of parties, the mutation of men and measures, will work out its dissolution and death.

In conclusion, your Committee submit the following resolutions for the action of this House, as embodying the conclusions at which they have arrived:

First: Resolved, That Charles Gilpin and Samuel M. Haller, were not duly elected as Delegates from Allegany county to this House, and are not therefore entitled to seats in this body.

Second: Resolved, That William Devecmon and William A. Bryden, having received, including and counting the votes of the legal and qualified voters who offered to vote, and by the judges were unlawfully refused, and on whose ballots were the names of William Devecmon and Bryden, and which should been received; a higher number of votes than the said Charles Gilpin and Samuel M. Haller; are hereby declared duly elected, and are entitled to seats in this body as Delegates from Allegany county.

A. LEO KNOTT,
Chairman.

JOHN Q. A. ROBSON,
RAYMOND W. BURCHE,
HORATIO BECK,
JAMES CLARK.

CERTIFICATE

OF THE RETURN OF THE JUDGES OF ELECTION IN ALLEGANY COUNTY.

To the Clerk of the Circuit Court for Allegany County:

WHEREAS an election for Comptroller of the Treasury of the State of Maryland, one member of the House of Representatives in the Congress of the United States, for the Fourth Congressional District of Maryland; one Senator for Allegany county, in the State Senate, and five members of the House of Delegates; was held on the first Tuesday succeeding the first Monday of November, being the sixth day of said month, in the year eighteen hundred and sixty-six, in the several election districts in the said Allegany county, distinguished by numbers from No. (1) one to No. (16) sixteen inclusive, conformably to the Constitution and Laws of this State; *and whereas*, we, the subscribers, attending Judges at the close of the election in said districts, having this day assembled at the usual place of the sitting of the Circuit Court for said county, with the books of the polls, on which are endorsed the several certificates agreeably to law, and having cast up the whole number of votes given in said districts according to the certificates made out on the day of election by the judges, it appears that Col. Robert Bruce had twenty-four hundred and ten votes, for Comptroller, Col. William J. Leonard had twenty-two hundred and ninety-two (2,292) votes, for Comptroller; Francis Thomas had twenty-three hundred and seventy-six (2,376) votes, for Representative in Congress, Col. William P. Maulsby had twenty-three hundred and eight votes, for Representative in Congress; Charles H. Ohr had twenty-three hundred and thirty-seven (2,337) votes for Senator, Alfred Spates had twenty-three hundred and twenty-five (2,325) votes for Senator; William R. McCulley had twenty-three hundred and ninety-nine (2,399) votes, for the House of Delegate, Charles Gilpin had twenty-three hundred and eighty (2,380) votes, for the House of Delegates, Samuel M. Haller had twenty-three hundred and fifty-nine (2,359) votes, for the House of Delegates, Daniel C. Bruce had twenty-three hundred and ninety-six (2,396) votes, for the House of Delegates, William A. Falkenstine had twenty-three hundred and five votes, for the House of Dele-

gates, George W. McCulloh had twenty-three hundred and fifty-six (2,356) votes, for the House of Delegates, Patrick Hammil had twenty-three hundred and seven (2,307) votes for the House of Delegates, William Devecmon had twenty-three hundred and thirty-six (2,336) votes for the House of Delegates, John McElfish had twenty-two hundred and ninety-seven (2,297) votes, for the House of Delegates, William A. Bryden had twenty-three hundred and thirty-four (2,334) votes, for the House of Delegates; whereupon we do determine, declare and return that Robert Bruce had the highest number of legal votes for Comptroller; Francis Thomas had the highest number of legal votes for Congress; Charles H. Ohr had the highest number of legal votes, and is duly elected Senator, and that William R. McCulley, Daniel C. Bruce, Charles Gilpin, George W. Culloh and Samuel M. Haller, had the highest number of legal votes, for the House of Delegates, and are duly elected delegates.

We further certify, that twenty hundred and thirteen (2,013) votes were cast in favor of the Constitutional amendment, and thirteen hundred and fifty-one (1,381) votes were cast against the Constitutional amendment, and that twelve hundred and fifty-six (1,256) votes were cast in favor of the County School Tax, and one hundred and seventeen (117) votes were cast against the County School Tax.

Given under our hands this 10th day of November, 1866.

Samuel W. Friend,	District No. 1.
David Kent,	" 2.
G. W. Layman,	" 3.
E. C. Lyons,	" 4.
William Conrad,	" 5.
John Borvard,	" 6.
Loyd Stallings,	" 7.
James F. Hartley,	" 8.
John Fletcher,	" 9.
James Chisholm,	" 10.
Joseph De Witt,	" 11.
Lewis Pritchard,	" 12.
Joseph M. Koevnor,	" 13.
John Brady,	" 14.
Ralph Thayer,	" 15.
John Piekin,	" 16.

STATE OF MARYLAND,

ALLEGANY COUNTY, TO WIT:

I, Horace Resley, Clerk of the Circuit Court for Allegany county, do hereby certify the above and foregoing to be truly taken from the original certificate of election, returned by the judges, and recorded in liber H. R., No. 25, folio 175, one of the land records of Allegany county, Md.

[SEAL.] In testimony whereof, I hereunto set my hand
and affix the seal of said court this 4th day
of January, 1867.

HORACE RESLEY, Cl'k Ct.
Ct. for Allegany Co.

(5 cts. U. S. Stamp.)

